



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/017,165

12/14/2001

Assaf Morag

050704/319163

7381

826

7590

08/30/2010

ALSTON & BIRD LLP

BANK OF AMERICA PLAZA

101 SOUTH TRYON STREET, SUITE 4000

CHARLOTTE, NC 28280-4000

EXAMINER

PORTER, RACHEL L

ART UNIT

PAPER NUMBER

3626

MAIL DATE

DELIVERY MODE

08/30/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b><i>Advisory Action Before the Filing of an Appeal Brief</i></b>	<b>Application No.</b> 10/017,165	<b>Applicant(s)</b> MORAG ET AL.	
	<b>Examiner</b> RACHEL L. PORTER	<b>Art Unit</b> 3626	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☒ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: none.  
 Claim(s) objected to: none.  
 Claim(s) rejected: 1,3-5, 7,9-12,14-15,17-19, 21, 23-26,28-29,31-33,35,37-40, and 42-48.  
 Claim(s) withdrawn from consideration: none.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
The applicant's arguments have been considered but are not persuasive. Applicant recites that the prior art does not teach or suggest "allowing the person to access a secure area and view the information provided by the professional services provider in response to receipt of the information entered by the person which is associated with a medical matter of the person." It is noted that the recited steps of claim 1 include "allowing the...provider qualified to advise.. to view information"; "providing a secure area within which the ...provider provides..." and "allowing the person to access...". The steps of "allowing" and "providing" are interpreted as "making available". These steps do not result in real action or changes. If the Applicant has particular actions required for these particular steps, the claim language should clearly set forth such steps. Moreover, if applicant intends for the secure area to be a physical space versus a virtual space, the claim language should clarify this distinction.

In the instant case, the Examiner has provided a combination of references address the limitations of claim 1. Papageorge discloses a medical consultation method including providing a secure area within which the professional services provider provides information advising the person about the medical matter in response to receipt of the entered information; (col. 7, lines 8-18-- physician uses a code to access entered patient information and question), wherein the secure area is accessible by the person via the client device; and allowing the person to access the secure area and view the information provided by the professional services provider (col. 6, lines 55-col. 7, line 8,8-18; 33-40: data is accessible by patients code and allows doctor and patient to consult and retrieve suggestions via computer.) Regarding applicant's arguments that the data is a printed report, the claim language does not indicate how the data is viewed, or even that it is viewed. It is noted that the current claim languages suggests merely "allowing" these steps to occur. The examiner is left to interpret the claim and apply art accordingly.

Regarding claim 44, the type of billing data included is found in non-functional descriptive material. They do not affect the manner in which the recited steps of claim 44 are performed. Thus, they will not distinguish the claimed invention from the prior art in terms of patentability. See In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowy, 325 F.2d 1579

/C. Luke Gilligan/  
Primary Examiner, Art Unit 3626

U.S. Patent and Trademark Office  
PTOL-303 (Rev. 08-06)

**Advisory Action Before the Filing of an Appeal Brief**

Part of Paper No. 20100826

Continuation of 3. NOTE: The proposed specification amendment includes the statement "the contents of which are incorporated herein by reference." CFR 1.57(a) allows for information to be incorporated by reference from a prior filed application only if all or a portion of the specification or drawing(s) is inadvertently omitted from the instant application. Such corrections must be made within a set time frame. See CFR 1.57(a)(1). While the Applicant may amend the specification to refer to the prior filed application, the phrase "the contents of which are incorporated herein by reference..." is improper.

Continuation of 13. Other: The IDS filed 7/6/10 will not be considered, because prosecution is closed. In accordance with 1.97(d) an IDS filed after prosecution is closed must be accompanied by an appropriate fee AND a statement stating that either (1) That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or (2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement. The Examiner is unable either of the required statements. Therefore, after final filing of the IDS on 7/6/10 is not proper...